IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1079 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

DARSHNABEN BHAVESH THACKER WD/O BHAVESH K THACKER

Appearance:

MR PV NANAVATI for Appellant

MR SURESH M SHAH for Respondents No. 1 to 3

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 16/03/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. Heard learned Advocate Shri P.V.Nanavati for the Appellant - Insurance Company and learned Advocate Shri Mehul S. Shah on Caveat for respondents No.1 to 3, who are original claimants. Respondents No. 4 and 5 are Driver and Owner and learned Advocate Shri Nanavati seeks permission to delete the said respondents at this stage in the present litigation. Permission is granted and respondents No. 4 and 5 are permitted to be deleted.

2. Admit. Learned Advocate Shri Mehul Shah waives service on behalf of respondents No. 1 to 3. At the request of the learned advocates, the Appeal is finally heard today.

3. In this Appeal the Appellant - Insurance Company has challenged the validity of the Award dated 05.10.2000 passed below Exh. 6 in Motor Accident Claim Petition No. 865 of 1999. By virtue of the said Award, compensation of Rs. 4,89,500/- has been awarded to respondents No. 1, 2 and 3, who are the claimants in Motor Accident Claim Petition No. 865 of 1999. The Award was passed below an Application filed under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") on account of death of Shri Bhavesh Khataubhai Thacker. Motor Accident Claim Petition No. 865 of 1999 has been filed by respondent No. 1, who is the widow of the deceased and 2 and 3 who are the parents of the deceased. After hearing the concerned Advocates and upon perusal of the affidavits filed in the proceedings, the Tribunal has directed the Appellant Insurance Company to deposit a sum of Rs.4,89,500/- along with interest at the rate of 12% from the date of the filing of the Application till the date of deposit of the said amount and the said amount has been directed to be disbursed in a particular manner in favour of the claimants.

4. Learned Advocate Shri P.V. Nanavati appearing for the Appellant has submitted that the validity of Section 163-A of the Act has been challenged and there are all chances that the Appellant Insurance Company might succeed in the said proceedings, which are at present pending before the Hon'ble Supreme Court. If validity of the said Section is not upheld in the said proceedings, the entire award shall become bad in law and on that event the amount which might have been paid to the claimants will have to be recovered by the appellant from them. It has been further submitted by him that there was also contributory negligence on the part of the Driver of the Vehicle in which the deceased was

travelling and the said fact has not been considered by the Tribunal while awarding the amount of compensation. In the circumstances, it has been submitted by him that the Award passed by the Tribunal is unjust and illegal and therefore it deserves to be quashed.

5. On the other hand, learned Advocate Shri Mehul Shah appearing for the respondents - who are the original claimants has submitted that the impugned award is just and proper and the amount has been awarded on an ad hoc basis and the application filed under the provisions of Section 166 of the Act is still pending and the claimants are hopeful of getting more amount by way of compensation in the said proceedings. As a matter of fact, it has been submitted by learned Advocate Mr. Mehul Shah for the respondents claimants that an Appeal might have been filed by the claimants challenging the amount which has been awarded by the Tribunal as the amount awarded is much less than what the claimants deserve. It has been submitted by him that the respondents are ready and willing to file an undertaking to the effect that they would not withdraw the proceedings filed under the provisions of Section 166 of the Act. He has also submitted that as the amount which has been awarded is less, the respondents should be permitted to withdraw the amount as directed by the Tribunal and the Appeal should be dismissed.

6. We have heard the learned advocates and looking to the facts of the case, we are of the view that as the application under Section 166 of the Act i.e. Motor Accident Claim Petition No. 865 of 1999 has not yet been disposed of and as the entire amount which has been awarded is not directed to be paid to the claimants, at this stage, we are not inclined to interfere with the proceedings and, therefore, we direct that the claimants shall file an undertaking to the effect that they will not withdraw the Motor Accident Claim Petition No. 865 of 1999 or they will not permit the said petition to be dismissed for default and they shall extend their cooperation to the Tribunal for getting the Motor Accident Claim Petition No. 865 of 1999 decided at an early date. The undertaking shall be filed within four weeks from today.

7. It has been submitted by learned Advocate Shri Nanavati that the entire amount payable under the Award has not been deposited. The balance amount shall be deposited within a period of six weeks from today. The amount which is to be paid immediately to the claimants shall be paid by account payee cheques and the balance

amount which has been directed to be deposited shall be invested in a nationalised bank for a period of 5 years in the names of the claimants as well as the Nazir of the Tribunal and the Fixed Deposit Receipts shall be kept in possession of the Nazir of the Tribunal and no amount shall be permitted to be borrowed on the security of the fixed deposit. The interest which might accrue on the said deposit shall be permitted to be withdrawn by the claimants.

8. In view of the above directions, The Appeal stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(J.R. Vora, J.)

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